



## South Coast

### Air Quality Management District

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## South Coast Air Quality Management District Board Approved Policy Recommendations

### The Waxman-Markey “American Clean Energy and Security Act of 2009”

#### **SUMMARY OF POLICY TOPICS ADDRESSED**

1. Low-Carbon Fuel Targets
2. *SUGGESTED RECOMMENDATION EXCLUDED*
3. Harmonize Motor Vehicle Standards
4. Expand Applicability of GHG Standards for Mobile Source Emissions
5. Efficacy Reports for Transportation GHG Reduction Plans
6. Goods Movement GHG Reductions
7. Energy Conservation Targets
8. Preemption
9. New Source Review
10. Offsets
11. Allowance Transfers
12. Role for Local Air Pollution Control Agencies
13. SoCal Climate Solutions Exchange
14. Permits
15. Monitoring, Recordkeeping and Reporting
16. Use of Revenue
17. Provide Protections
18. Local Co-pollutant Benefits
19. Anti-Backsliding Provisions
20. Prohibit International Trading and Offsets
21. Prohibit Trading and Offsets Related to Black Carbon
22. Prohibit Increased Use of Diesel Standby Generators
23. Recognition of Early GHG Reductions

#### **TITLE I—CLEAN ENERGY**

1. **Issue:** Low-Carbon Fuel Targets - The proposed federal low-carbon transportation fuel program contains targets that are less stringent than those under

the California Air Resources Board's proposed rule, which requires a 10% reduction in greenhouse gas emissions per unit of energy by 2020. The federal program requires a 5% improvement by 2023 and 10% by 2030.

**Recommendation:** Modify the federal bill to require a 10% improvement by 2020 (p. 66):

“for calendar year 2020 and later, the annual average lifecycle greenhouse gas emission is at least 10 percent below the fuel emission baseline.”

(The bill already requires EPA to review and revise the target every 5 years beginning in 2020.)

2. **Issue:** *SUGGESTED RECOMMENDATION EXCLUDED*

**TITLE II—ENERGY EFFICIENCY**

3. **Issue:** Harmonize Motor Vehicle Standards - The bill requires the President to adopt motor vehicle standards that harmonize to the extent practicable, motor vehicle standards set by EPA, CARB, and CAFE (fuel economy) standards set by the National Highway Transportation Safety Administration. Such standards must achieve equivalent reductions as would be obtained under the Pavley bill (AB 1493), if implemented in California and all other states that have adopted it. However, the bill requires that the standards be “achievable” by auto manufacturers. It is unclear whether this modifies existing technology-forcing provisions in the Clean Air Act. Also, there is no deadline to adopt these rules.

**Recommendation:** Clarify that technology-forcing provisions of the Clean Air Act remain applicable, and establish a deadline for rule adoption (p. 268)

“1) are achievable by the automobile manufacturing companies, consistent with the requirements of 42 U.S.C. § 7521 (a)(3)(A)(i);”

“The initial set of such standards shall be adopted no later than December 31, 2010.”

4. **Issues:** Expand Applicability of GHG Standards for Mobile Source Emissions - The bill requires EPA to promulgate GHG standards for new marine vessels and locomotives by 2012, and for such other classes and categories of other nonroad engines as EPA deems appropriate. The District has urged that EPA be given the authority to adopt regulations for in-use as well as new equipment. Also, the bill does not set any deadlines for regulation of nonroad engines other than

locomotives and marine vessels. Finally, the bill does not require the rules for nonroad engines to meet the requirement of the the “greatest degree of emission reduction achievable, based on the application for technology which will be available at the time such standards take effect...” (technology-forcing).

**Recommendations:** Add “in-use” to appropriate sections of bill. (pp. 270, 271.)

Add “and other nonroad vehicles and engines” to section establishing technology-forcing standard. (p. 271.)

Set deadline for other nonroad vehicle regulation. (p. 270.)

“The Administrator shall promulgate standards applicable to the initial classes and categories of nonroad vehicles and engines no later than December 31, 2012.”

5. **Issue:** Efficacy Reports for Transportation GHG Reduction Plans - The bill requires states to adopt goals for reducing transportation GHGs, and requires each transportation plan and transportation improvement program to include strategies to achieve these goals. The goals must be updated every 4 years. The program encourages methods similar to California SB 375 as well as pricing and demand reduction measures. However, EPA cannot reject a goal or plan, nor can a citizen sue based on the adequacy of a goal or plan.

**Recommendation:** Require states to monitor and report on the efficacy of strategies implemented, and require EPA to review these reports and publish information regarding the efficacy of these strategies. (p. 282.)

“(k) The Administrator shall, no later than 2 years after the date of enactment of this section, promulgate regulations requiring states to monitor and report to the Administrator on the efficacy of strategies included in the plan to achieve transportation-related greenhouse gas emission reduction goals, and specifying the timing and methodologies for such monitoring and reporting.

The Administrator shall review such reports and, at least every five years after the date of enactment of this section, shall publish information concerning the efficacy of strategies, including, but not limited to those listed in subdivision (e) of this section.”

6. **Issue:** Goods Movement GHG Reductions - This bill addresses

greenhouse gas reductions from goods movement. Electrification is the primary way that renewable power can be included in the transportation sector to achieve this goal.

**Recommendation:** Add the following language to page 287 as new subdivision (i):

“(i) The Administrator shall establish a program to fund electrification of freight transportation systems in major national goods movement corridors. Such program shall provide priority for electrification of transportation systems located in areas that –

- (1) are gateways for high volumes of international and national freight transport, and
- (2) require substantial criteria pollutant emission reductions in order to attain national ambient air quality standards.”

7. **Issue:** Energy Conservation Targets - The bill requires retail electricity and natural gas distributors to meet conservation targets of 15% and 10% respectively by 2020. This may be unrealistic for energy distributors, such as those in California that have already achieved substantial energy savings.

**Recommendation:** Allow distributors to petition DOE to set a different standard. (p. 300.)

“Any retail or natural gas distributor may petition the Secretary to promulgate a different percentage if the distributor demonstrates that it has already achieved better than average energy savings and it is not feasible to attain the percentage in the above table. Such a petition must be filed no later than one year before the year to which the standard applies.”

### **TITLE III—REDUCING GLOBAL WARMING POLLUTION**

8. **Issue:** Preemption - The bill preempts cap and trade programs adopted by a state or political subdivision for greenhouse gases for the years 2012 through 2017. Otherwise, the bill provides that it does not preempt state GHG cap programs, but does not specifically provide that it does not preempt other state and local GHG measures.

**Recommendations:** Add a provision requiring EPA to waive preemption for state or regional programs that cover at least the same sources as the federal program, achieve equivalent emission reductions over the same time period, use equivalent enforcement and monitoring, and use equally stringent requirements for

the use of offsets, (p. 527). Also add “any state and local GHG measures” to non-preemption provision (p. 526).

Add to Sec. 861 (p. 527):

“The Administrator shall, after notice and opportunity for public hearing, waive application of this section to any State or regional organization which has adopted a program if the Administrator determines that all of the following requirements are satisfied:

(a) the program covers, at minimum, all the sources in the State or region which would be a “covered entity” under the program established under Title VII of the Clean Air Act;

(b) the program will achieve at least equivalent reductions in greenhouse gases, over the same time period, as would be achieved if the program established under Title VII of the Clean Air Act were applicable in such State or region;

(c) the program will provide a level of enforcement and monitoring, to ensure compliance with emission reduction requirements, at least equivalent to the program established under Title VII of the Clean Air Act, and

(d) the program requirements for use of offsets are at least as stringent as the requirements of the program established under Title VII of the Clean Air Act.”

In addition, staff recommends that credits under the federal cap and trade program not be available for reductions required by a state or regional cap and trade program that goes beyond federal requirements. Specifically, staff recommends adding the following language to Sec. 861 (p. 527):

“No covered entity may create or earn allowances, credits, or offsets from emission reductions going beyond the requirements of the program established under Title VII of the Clean Air Act if such reductions are required by a program which has been granted a waiver under this section.”

Add to end of Sec. 334 (p.526):

“and any other requirement or prohibition respecting emissions of greenhouse gases.”.

9. **Issue:** New Source Review - Unlike RECLAIM, the federal bill does not require the lowest achievable emissions rate (LAER) (equivalent to California BACT) for GHG for new or modified covered entities. Such a requirement serves to minimize the need for allocations for new or modified sources, and helps advance the state of technology.

**Recommendation:** Require LAER for new sources and major modifications to existing stationary sources (p. 328):

“(c) Such regulations shall require that each covered entity of the types listed in subparagraphs 700 (12)(A), (E), (F), (G), or (H) that is new or is a major modification, as defined by the Administrator, to an existing entity, shall be constructed so as to achieve the most stringent emission limitation for any greenhouse gas emitted by such entity that is achieved in practice by such class or category of entity.”

10. **Issue:** Offsets - The draft bill has a very generous use of offsets in lieu of surrendering allowances. Offsets are required to be surrendered at a 1.25 to 1 ratio. Offsets can be generated from reduced deforestation, destruction of fluorinated gases (called compensatory offsets), and through a variety of project types. In 2015, 28% of the reduction obligation can be met with offsets. In 2040, this increases to 45%. Up to half of the offsets can be generated internationally.

While there are criteria in the rule that any offsets be additional, quantifiable, real, verifiable, and enforceable, it is more difficult to monitor offsets that are not created in the United States. Domestically created offsets would also often result in co-benefits that would be beneficial to local or regional air quality and be better for national job creation.

**Recommendations:** Staff has several recommended language changes to address these issues. Proposed changes on page 372 to (c)(1)(A) would increase the offset ratio for international offsets to provide additional incentives for on-site reductions or to make it more attractive to use domestic offsets rather than international offsets. Proposed changes to (c)(1)(B) reduce the amount of offsets allowed to one fourth of what is proposed in the bill. Proposed changes to (c)(1)(C) would include in the President’s recommendation to Congress an analysis of whether the offset ratio or percentage of domestic and international offsets should be adjusted:

Add language to p.372

“(A) IN GENERAL.—A covered entity may satisfy a percentage of its compliance obligations by holding 1.25 offset credits in lieu of an emission allowance if using domestic offsets and by holding 1.50 offset credits in lieu of an emission allowance if using international offsets.

(B) APPLICABLE PERCENTAGE.— The percentage referred to in subparagraph (A) for a given calendar year shall be determined by dividing 0.5 billion by the sum of 0.5 billion plus the number of emission allowances

established under section 721(a) for the previous year, and multiplying that number by 100.”

Add language to p.373

“Congress as to whether the number 0.5 billion specified in subparagraph (B) should be increased or decreased, or the percentages in subparagraphs (A) or (B) should be adjusted.”

Staff also recommends that the Advisory Board that is established to make recommendations regarding offset project types should include co-benefit analysis. In addition, the initial eligibility list for project types recommended by the Advisory Board should give priority to offset projects that will be implemented in the United States. This is reflected in the additional language below:

Add language to p. 400

“(C) any beneficial or adverse environmental, public health, welfare, social, economic, or energy effects associated with an offset project type;  
(D) the degree to which other co-benefits in criteria or toxic air contaminants would occur and the extent to which such reductions would benefit local or regional areas to achieve more healthful air.”

Add language to p. 404

“In determining the initial list, the Administrator shall give priority to consideration of offset project types that are recommended by the Advisory Board, and shall give priority to offset projects that will be implemented in the United States.

“(2) the reversal policies and mechanisms established under section 734 (b)  
“(3) measures to improve the accountability of the offsets program; and  
“(4) the type and/or amount of international offsets to ensure that such offsets are as real, additional, and enforceable as domestic offsets.

11. **Issue:** Allowance Transfers – Part C Section 724 states that allowance transfers are effective only upon receipt of written certification of the transfer and recording by the Administrator. Signature by all the parties is best to assure a contractual meeting of the minds on the transfer, price, terms, etc. RECLAIM experience has shown this to be best to prevent transfer errors and misinformation on transfer terms. Also one must anticipate that there may be multiple parties involved in the transfer.



**Recommendation:** Revise Part C Section 724 (c):

“No transfer of an emission allowance shall be effective until a written certification of the transfer, signed by a responsible official of each of the transferors, is received and recorded by the Administrator...” (p. 378)

12. **Issue:** Role for Local Air Pollution Control Agencies - There are a few places in the draft bill where limited delegation is given to State or tribal agencies. Local air districts should also be eligible to participate, which would be accomplished with the following changes:

**Recommendations:** Add language to p. 419:

“(b) DELEGATION.—The Administrator may delegate to a State, or local air pollution control agency or tribal government the responsibility for conducting audits under this section if the Administrator finds that the program proposed by the State, or local air pollution control agency or tribal government provides assurances equivalent to those provided by the auditing program of the Administrator, and that the integrity of the offset program under this part will be maintained.”

Add language to p. 420:

“(A) was established by State, local air pollution control agency or tribal law or regulation prior to July 1, 2009;

13. **Issue:** SoCal Climate Solutions Exchange - Section 470 addresses early offset supplies, and recognizes offsets from other government-recognized programs. As currently drafted, reductions under the South Coast Air Quality Management District’s Rules 2701 – SoCal Climate Solutions Exchange, and 2702 – Greenhouse Gas Reduction Program, would not be eligible for consideration.

**Recommendations:** The bill language change suggested in the previous issue item would adjust the date that a program had to be in place, which would help enable reductions generated under Rule 2702 to be eligible. The following language addition is also recommended:

Add language to p. 421:

“(F) ensures that no credits are issued for activities for which the entity administering the program, or a program administrator or representative, other than



a State or local air pollution control agency has funded, solicited, or served as a fund administrator for the development of, the project or activity that caused the emission reduction or sequestration.”

14. **Issue:** Permits - Section 327 states that Title V permits will be used to implement and enforce these provisions for stationary sources that are otherwise subject to Title V. However, GHG emissions cannot be the basis for requiring a Title V permit (section 834). Because some industrial facilities may have emissions >25,000 MMT CO<sub>2</sub>E and be subject to the cap-and-trade requirements, there needs to be a mechanism identified for these facilities.

**Recommendations:** Add the following language to p. 394, and change the subsequent paragraph labels:

“(b) PERMIT PROGRAM. – For stationary sources that are not otherwise subject to Title V of this Act, the provisions of this title shall be implemented by permits issued to covered entities and enforced by state or local air pollution control agencies. Any such permit shall require a covered entity to hold a number of emission allowances at least equal to the total annual amount of carbon dioxide equivalents for which emission allowances must be held by the covered entity under section 722.

(c) MULTIPLE OWNERS...”

15. **Issue:** - Monitoring, Recordkeeping and Reporting - The draft federal bill contains a significant number of technical monitoring, recordkeeping, and reporting program details that are critical to a successful cap-and-trade program.

**Recommendations:** It is strongly recommended that the following elements remain in the proposal:

Part B Section 713 (b)(1)(G) requirements that submitted emissions data, from covered entities that are required to hold emission allowances, be based on continuous monitoring systems for fuel flow or emissions and that alternative systems demonstrate the same precision, reliability, accessibility, and timeliness. (p. 351)

Part B Section 713 (b)(1)(O) requirements to prescribe methods by which the Administrator will estimate emissions for cases in which satisfactory data is not submitted. For covered entities required to hold emission allowances, this method is to provide a conservative estimate of the highest emission levels that may have occurred or assumptions regarding maximum potential emission levels. This is stated to ‘ensure that emissions are not underreported and to create a strong

incentive for meeting data monitoring and reporting requirements.’ For other reporting entities not required to hold allowances, a ‘reasonable estimate of the emissions levels’ is the target. This differentiation is appropriate. (p. 355)

Part B Section 713 (b)(1)(Q) requirements for data for quality assurance of monitoring systems and measurement devices. (p. 356)

16. **Issue:** Use of Revenue – The manner in which any revenue which is generated from this bill’s provisions, whether it is by auctioning of allowances or otherwise, is utilized, is not fully addressed in this draft bill.

**Recommendation:** Revenue should be invested in clean and renewable energy, energy efficiency, and technology advancement. Projects in non-attainment Environmental Justice areas where significant co-benefits would also occur should be given the highest priority.

17. **Issue:** Provide Protections – The current discussion draft does not explicitly provide protections against the creation or exacerbation of local or regional cumulative impacts.

**Recommendations:** The following language, which is adapted from AB32 - The California Global Warming Solutions Act of 2006, could be added as a new section to the beginning of Part C, Program Rules, before Section 721, Emission Allowances:

Add: “Market-based mechanisms shall, to the extent feasible, consider and avoid direct, indirect, and cumulative environmental impacts, including localized impacts in communities that are already adversely impacted by air pollution. The program design should prevent any increase in the emissions of toxic air contaminants or criteria air pollutants” (p.326)

18. **Issue:** Local Co-pollutant Benefits – The most polluted communities and regions should gain the most from localized co-pollutant benefits.

**Recommendations:** The following language, which is adapted from AB32, should be added after the previous inserted language to Part C, Program Rules:

Add: “The regulations, programs, mechanisms and incentives developed, where applicable and to the extent feasible, should direct public and private investment toward the most disadvantaged communities in the United States and provide an opportunity for small businesses, schools, affordable housing

associations, and other community institutions to participate in and benefit from nationwide efforts to reduce GHG emissions.” (p. 326)

19. **Issue:** Anti-Backsliding Provisions – The discussion draft does not include language to prevent backsliding.

**Recommendations:** The following language, also from AB32, should be added after the above to Part C, Program Rules:

Add: “Ensure that activities undertaken pursuant to the regulations complement, and do not interfere with, efforts to achieve and maintain federal and state ambient air quality standards and to reduce toxic air contaminant emissions.” (p. 326)

20. **Issue:** Prohibit International Trading and Offsets – Staff’s original recommendation limited the total amount of offsets that could be used and increased the offset ratio for international offsets to make domestic offsets more attractive. The following language changes would eliminate the use of international offsets entirely:

**Recommendations:** If the Board endorses this policy, delete language, as shown below.

Delete the following sections:

- Section 722 (C)(2) which allows use of international offsets to be used for compliance purposes (p. 373).
- Section 726 which sets up the Strategic Reserve, as it is funded with offsets from international deforestation projects (p. 381 - 393).
- Section 728, International Emission Allowances (p.396).

Modify the title of Section 731 (d) as shown: (d) SCIENTIFIC REVIEW OF OFFSET PROGRAMS.

Delete the following sections:

- Section 743, International Offset Credits (p. 423 – 436)
- Section 752, Findings (related to international offsets from reduced deforestation) (p. 437)
- Section 753, Supplemental Emissions Reductions through Reduced Deforestation (p. 438)
- Section 754, Requirements for International Deforestation Reduction Program (p. 439 - 446)

- Section 755, Reports and Reviews, related to international deforestation offsets (p. 446 - 448)
- Section 756, Legal Effect of Part (p. 448)

Delete Part E – Supplemental Emission Reductions from Reduced Deforestation in its entirety (p. 436 – 448).

Delete definitions in Section 700:

- (28) INTERNATIONAL EMISSION ALLOWANCE
- (29) INTERNATIONAL FOREST CARBON ACTIVITIES
- (30) INTERNATIONAL OFFSET CREDIT
- (33) NATIONAL DEFORESTATION BASELINE
- (44) STRATEGIC RESERVE ALLOWANCE

Delete Section 792 (b) relating to allowances for reduced deforestation being auctioned (p.483)

21. **Issue:** Prohibit Trading and Offsets Related to Black Carbon. Black carbon is under Subtitle C – Additional GHG Standards, but it is not clear how that substance would be regulated. Black carbon is often associated with diesel emissions, which are toxic.

**Recommendations:** To ensure that black carbon is not included in the cap-and-trade program and that offsets could not be used to comply with regulations to reduce black carbon emissions, the following language is suggested for Part E – Black Carbon:

Add to Section 851 (a): “Black carbon shall not be part of a cap-and-trade program, but be subject to direct regulations to ensure that a source cannot purchase allowances or offsets in lieu of direct emission reductions” (p.523).

22. **Issue:** Prohibit Increased Use of Diesel Standby Generators – Staff recommends that increased use of diesel back-up generators not be used to reduce peak energy demand.

**Recommendations:** The following language could be added to the discussion draft bill:

Add: “Load-serving entities required to submit a plan pursuant to section 143 (d) shall not rely on increased use of diesel back-up generators.” (p. 96)

23. **Issue:** Recognition of Early GHG Reductions – The discussion draft bill should recognize voluntary early actions that have been accomplished by many cities and facilities, especially since those actions might not fall under the strict definition of an offset. Section 721 (g) states that regulations regarding allocations are due within 24 months. Language could be added here to formalize an intention to provide a reward for voluntary early reductions.

**Recommendations:** The following language could be added to Section 721 (g):

Add: “Such regulations will include provisions to recognize voluntary, early greenhouse gas reductions”. (p. 368)